

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.M.C. 2563/2007 & CRL.MA 9059/2007

Reserved on: 3rd February 2009
Date of decision: 20th February 2009

P.K.THUNGON Petitioner
Through: Mr. Gurdial Singh with
Mr. K.K. Patra, Advocate
versus

CENTRAL BUREAU OF INVESTIGATION
..... Respondent
Through: Mr. Harish Gulati, Sr. Standing
Counsel with Mr. Anindya Malhotra and
Mr. Ashiesh Kumar, Advocates.

CRL.REV. P. 32/2008 & CRL.MA. 539/2008

P.K.THUNGON Petitioner
Through: Mr. Gurdial Singh with
Mr. K.K. Patra, Advocate
versus

CENTRAL BUREAU OF INVESTIGATION
..... Respondent
Through: Mr. Harish Gulati, Sr. Standing
Counsel with Mr. Anindya Malhotra and
Mr. Ashiesh Kumar, Advocates.

CRL.REV.P. 52/2008 & CRL.MA. 909/2008

MAHESH MAHESHWARI Petitioner
Through Mr. Ramesh Gupta with
Mr. Sunil Sethi, Mr. Sumit Arora and
Mr. Rahul Bakshi, Advocates
versus

CENTRAL BUREAU OF INVESTIGATION
..... Respondent
Through: Mr. Harish Gulati, Sr. Standing
Counsel with Mr. Anindya Malhotra and
Mr. Ashiesh Kumar Advocates.

CRL.M.C. 2587/2007 & CRL.MA. 9162/2007

MAHESH MAHESHWARI Petitioner
Through Mr. Ramesh Gupta with
Mr. Sunil Sethi, Mr. Sumit Arora and
Mr. Rahul Bakshi, Advocates

versus

CENTRAL BUREAU OF INVESTIGATION

..... Respondent

Through: Mr. Harish Gulati, Sr. Standing
Counsel with Mr. Anindya Malhotra and
Mr. Ashiesh Kumar, Advocates.

CORAM:

HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be
allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

JUDGMENT

20.02.2009

S. Muralidhar, J.

1. These are four petitions raising common questions and are therefore being disposed of by this common judgment.

2. On 1st January 1998 the Central Bureau of Investigation (CBI) registered RCA No. 1(A)/98-DLI ACB under Sections 120-B/409/419/420/467/468/471 IPC and 13(2) read with 13(1)(c) & (d) of the Prohibition of Corruption Act, 1988 (PC Act) against five persons, VIZ., P.K. Thungon, Tali AO, C. Sangeet AO, Mahesh Maheshwari and N.M. Jain. The charge sheet filed by the CBI on 30th June 2003 showed the aforementioned five persons as the accused persons being sent up for trial. Five others were shown in Column 2 as accused persons not sent up for trial.

3. The charge sheet narrates that the case was registered on the basis of a written complaint of Shri P.C. Sharma, Deputy SP, CBI, ACB,
Crl.M.C. Nos.2563/07, 2587/07, Crl.Rev(P) 32/08 & 52/08 *Page 2 of 16*

New Delhi that during the course of investigation of RC 33(A) /96 DLI, a search was conducted in the residential premises of P.K. Thungon, a former Minister of State, Ministry of Urban Affairs and Employment, New Delhi on 10th July 1996. During the search various documents and articles were seized. These included one partly used cheque book of SB A/c No. 7770 of Vijaya Bank, Ansari Road, New Delhi in the name of Prem Kumar. Investigation with Vijaya Bank revealed that P.K.Thungon had opened this account in the said Bank on 31st March 1994 in the false name of Prem Kumar giving the false address as C-113, Sarvodaya Enclave, New Delhi. There was also a locker No. 288 in the said bank assumed name of Prem Kumar. It is further alleged that an amount of Rs.8 lakhs was credited in the said savings bank a/c No. 7770 and by transfer from A/c No. 7798 on 26th April 1994. Account No. 7798 had been opened one day earlier, i.e.on 25th April 1994, in the fictitious name of Thanu Thungon with the official address as 2050/25 Sharada Nand Marg near Ajmeri Gate, New Delhi on introduction of Mahesh Maheshwari, Director, M/s S.N.H. India Traders, New Delhi. It was alleged that Mahesh Maheshwari had in fact opened A/c No. 7798 by impersonating as Thanu Thungon and had introduced himself on the basis of Current A/c No. 1379 of the company in which he was one of the Directors.

4. In the said A/c No. 7798 an amount of Rs. 9,98,500/- was credited through clearing on 25th April 1994. On the next day an amount of Rs. 8 lakhs was transferred to A/c No. 7770 opened in the name of Prem Kumar. Similarly, an amount of Rs. 1,98,000/- was withdrawn by

self-cheque from A/c No. 7798 on 3rd May 1994 and the same was credited in SB A/c No. 7770. The CFSL expert to whom the documents pertaining to the said accounts with specimen writings of Mahesh Maheshwari were sent confirmed that the signatures in the name of Thanu Thungon were in the writings of Mahesh Maheshwari. Inquiries about the credit of Rs.9,98,500/- into A/c No. 7798 revealed that it was the proceeds of DD No. 479623 dated 21st April 1994 issued in favour of Thanu Thungon by the SBI Lerie Branch, Kohima, Nagaland on the request of Irrigation and Flood Control Department, Govt. of Nagaland.

5. The trail of the money transactions led the CBI to a letter dated 24th January 1994 of the Planning Commission sanctioning a sum of Rs. 2 crores towards the grant of additional assistance of Rs. 41.0 crores to the Government of Nagaland by the Government of India, Ministry of Water Resources for renovation and upgradation of minor irrigation projects in Nagaland during the year 1993-94. One of the conditions was that the Government of Nagaland had to provide the balance fund of Rs. 2.10 crores for the project. The assistance from the Central Government was to be released in two instalments of Rs. 1 crore each. The first instalment of Rs. 1 crore was released by the Finance Ministry, Department of Expenditure, Government of India on 21st March 1994. It was kept in a civil deposit by the Government of Nagaland on 29th March 1994. Thereafter the Joint Director, Irrigation and Flood Control Department, Government of Nagaland was allowed to withdraw Rs. 50 lakhs from the said amount of Rs. 1 crore.

6. Thereafter Mezakrol, the Joint Director, Irrigation and Flood Control Department, Government of Nagaland wrote a letter on 6th April 1994 seeking permission of the Government of Nagaland for procurement of sausage wire worth Rs. 20 lakhs for the ongoing minor irrigation projects. The then Minister of State for Irrigation and Flood Control directed that the supply order of sausage wire for the sum of Rs. 50 lakhs be issued “only to Sh. Tali Ao on priority basis”. Thereafter, even before the receipt of approval of the Government for the procurement of sausage wire, Mezakrol placed an order dated 2nd April 1994 on Tali Ao for supply of 85.450 sq. m of sausage wire. On 7th April 1994 he placed another order on Shri T. Moa for supply of 57,000 sq.m of sausage wire.

7. Tali Ao submitted a bill dated 19th April 1994 of Rs. 29,99,295/- against the supply of sausage wire to the Joint Director, Irrigation Flood Control, Nagaland. He mentioned in a hand written letter dated 21st April 1994 that a demand draft of Rs. 10 lakhs was to be deposited in favour of Thanu Thungon and another for sum of Rs. 15 lakhs in favour of K. Konngon Konyak. Mezakrol after getting the withdrawal authority of Rs. 50 lakhs submitted a bill for clearance to the Treasury Office (South), Kohima which passed the bill on 21st April 1994. Mezakrol approached the SB, Lerie Branch to make a DD for Rs. 10 lakhs in favour of Thanu Thungon payable at SBI New Delhi. Several DACs were thereafter got made and encashed by Mezakrol. The pattern of deposit of money running to lakh of rupees followed by

immediate withdrawal thereafter was repeated in the case of Konngom Konyak. As far as the present petitioners are concerned, the charge details the subsequent events as under:

“Demand draft No.479623 for Rs.9,98,500/- lakhs in favour of Sh. Thanu Thungon issued from SBI Ierie branch was deposited on 25.4.94 in A/c No. 7798 of Vijaya Bank, Ansari Road, Dariya Ganj, Delhi. This amount was subsequently withdrawn. Investigation has revealed that this account was fraudulently and dishonesty opened on 25.4.94 by Sh. Mahesh Maheshwari in connivance with Sh. P.K. Thungon and Sh. N.M. Jain, Sr. Branch Manager, Vijaya Bank, Ansari Road, Delhi by impersonating himself as Thanu Thungon and he himself became the introducer on the basis of current A/c No. 1379 of M/s SNH India Traders Ltd. with whom Sh. Maheshwari was one of the Directors. This amount was credited in the said A/c No. 7798 on 25.4.94 through clearing and the aforesaid Demand Draft for Rs. 9,98,500/- was deposited by Sh. Mahesh Maheshwari on 25.4.94 in A/c No. 7798. Thereafter, Sh. Mahesh Maheshwari issued cheque for Rs. 8 lakhs in favour of Prem Kumar and deposited the same on 26.4.94 in A/c No. 7770 of Sh. P.K. Thungon in the same Bank and Rs. 1,98,000/- was withdrawn by self cheque on 3.5.94. Investigation has revealed that this A/c No. 7770 was opened on 31.3.94 with initial deposit of Rs. 1 lakh by Sh.P.K. Thungon, the then Minister of State of Urban Affairs & Employment and Water Resources, Govt. of India, New Delhi in the name of Sh. Prem Kumar giving false address of C-113, Sarvodaya Enclave, New Delhi on 31.3.94 and also hired locker No. 288 in the same bank branch in the name of Prem Kumar.”

8. On the basis of the above materials the CBI in its charge sheet

dated 30th June 2003 concluded that a prima facie the case was made out for prosecuting the petitioners for the offences abovementioned. The charge sheet noted that the Government of Nagaland had declined sanction for prosecuting Konngam Konyak, Mezakrol and other government officials.

9. By an order dated 3rd July 2004, the learned Special Judge took cognizance of the offences as far as P.K. Thungon, Tali Ao, C.Sangeet Ao and Mahesh Maheshwari were concerned and ordered them to be summoned. As regards N.M. Jain, the learned Special Judge concluded that there was not sufficient material to take cognizance and summon him to face trial. N.M. Jain was accordingly discharged.

10. An application was filed by P.K. Thungon in the Court of the learned Special Judge seeking discharge on the ground that the Court of Special Judge, CBI, New Delhi had no territorial jurisdiction to try the case. Reliance was placed by the petitioners on the judgment of the Supreme Court in *CBI, AHD, Patna v. Braj Bhushan Prasad (2001) 9 SCC 432* to contend that in terms of Section 4 (2) of the PC Act, the offence has to be tried by the Special Judge “for the area within which it was committed or, as the case may be, by the Special Judge appointed for the case, or where there are more special Judges than one for such area, by such one of them as may be specified in this behalf by the Central Government”. It was contended that since the amounts in the instant case were all released through demand drafts in Nagaland, having been drawn on the SBI Branch, Ereie in Kohima, the

jurisdiction to try these offences under the PC Act was only with the Special Judge at Nagaland and not at New Delhi. Mahesh Maheshwari also filed a similar application. His case was that the trial for the offences under Sections 419, 420, 468 and 471 IPC should be tried by the Court at Delhi whereas the trial of the offences under the PC Act should take place in Nagaland.

11. The learned Special Judge, CBI by a common order dated 1st May 2007 rejected the applications of both P.K. Thungon and Mahesh Maheshwari. It was held that on a collective reading of Sections 179 and 180 IPC given the nature of the offences and the manner of their commission, the Court of Special Judge at New Delhi would have the jurisdiction to try the case. Two of the present petitions, i.e., Crl.M.C. No.2563 of 2007 (by P.K.Thungon) and Crl.M.C. No.2587 of 2007 (by Mahesh Maheshwari) are directed against the aforementioned order dated 1st May 2007, rejecting the plea of the petitioners that the Court in Delhi lacks the territorial jurisdiction to try the offences in question.

12. The other two petitions, namely, Crl. Rev. (P) No. 32 of 2008 by P.K. Thungon and Crl. Rev. (P) No.52 of 2008 by Mahesh Maheshwari seek to challenge the order on charge dated 13th November 2007 and the charge dated 21st November 2007 whereby the petitioners were charged for the offences under Section 120-B read with Section 419/420/467/468/ 471 IPC and 13(2) read with 13 (1) (c) and 13 (1) (d) of the PC Act. It may be added that as regards Mahesh Crl.M.C. Nos.2563/07, 2587/07, Crl.Rev(P) 32/08 & 52/08

Maheshwari, substantive charges under Sections 419/468/471 IPC have been framed. As regards P.K. Thungon, substantive charge under Section 13 (2) read with 13 (1) (d) of the PC Act has been framed.

13. Arguments have been heard at length of Mr. Gurdial Singh, the learned counsel appearing for the petitioner, P.K. Thungon and Mr. Ramesh Gupta, the learned counsel appearing for the petitioner, Mahesh Maheshwari. Mr. Harish Gulati, the learned Senior Standing Counsel made submissions on behalf of the CBI.

14. Counsel for the petitioners seek to place extensive reliance upon the judgment in *Braj Bhushan Prasad* (supra) to contend that it applies on all fours and that it is plain that the Court of Special Judge in New Delhi does not have the territorial jurisdiction to try the offences under the PC Act. It is submitted on behalf of the petitioner Mahesh Maheshwari that while the trial against him for the substantive IPC offences could be by the criminal court in Delhi, the trial of the PC Act offences could take place only in the Court of the Special Judge in Nagaland. This submission is without prejudice to the rights and contentions of both the petitioners that when the charge sheet and the accompanying materials are read as a whole, no case whatsoever is made out against either of the petitioners for any of the offences for which they have been charged.

15. Counsel for both petitioners have placed on record the charge

sheet filed by the CBI in *Braj Bhushan Prasad* (supra). In particular, they refer to the portions of the said charge sheet which sets out a table indicating the names of the proprietors/partners of the firms which supplied fodder/feed, the names of the banks where the drafts were encashed and the account numbers. It is pointed out that in many of the instances listed in the charge sheet, the encashment of the bank drafts were in different places like Calcutta, Patna, Aurangabad, Muzaffarpur and so on. However, the place from where the money was transferred was Chaibasa, Saraikela within the State of Jharkhand. Consequently it is sought to be contended that the place from where the money is taken is what is relevant for determining the location of the court which is competent to and has jurisdiction to try the offences under the PC Act. According to the petitioners, the place where the money is received is not relevant for this purpose. Applying the said analogy to the facts of the present case it is sought to be contended that the fact that the demand drafts were deposited in the bank accounts opened in New Delhi is not relevant. The fact that the demand drafts in question were in fact drawn on the SBI Branch in Kohima is alone relevant since that is where the alleged offence was completed. It is further submitted that in terms of the ratio in *Braj Bhushan Prasad* (supra) the location where the main offence was committed is relevant. The submission is that in the instant case, the main offence is that under the PC Act. However, according to Mahesh Maheshwari the main offence is not under the PC Act but the IPC. On the other hand, petitioner P.K. Thungon contends that the main offence is in fact the one under the PC Act which did not take place within the jurisdiction

of the Special Judge at New Delhi. Reliance is also placed on the judgment of the Supreme Court in *V.K. Puri v. Central Bureau of Investigation 2007 [2] JCC 1470*.

16. In the considered view of this Court, the contentions of the petitioners on the question of territorial jurisdiction are unacceptable. It is plain from Section 4(2) of the PC Act that the offences thereunder have to be tried by the Special Judge for the area within which the offence was committed. Section 5(1) and 5(3) PC Act mandate that the CrPC will apply to the court of the Special Judge constituted under the PC Act. Under Sections 178 CrPC where there is uncertainty about “in which of several local areas an offence was committed”, then it could be tried by the court “having jurisdiction over any of such local areas”. Section 179 CrPC, which is relevant for the present purpose, reads as under:

“179. Offence triable where act is done or consequence ensues._When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued.”

17. On the facts of the present case, it cannot be said that the entire offence for the purposes of the PC Act took place only within the local limits of Kohima, where the demand drafts may have been prepared. The case of the prosecution is that the said amounts were deposited by way of demand drafts in the bank accounts in Delhi and thereafter

transferred to other accounts in Delhi either held in fictitious names for the benefit of the petitioners or in the accounts opened by the petitioners and operated by them. These transactions form an integral part of the offence of criminal conspiracy with a view to doing a criminal act punishable under the PC Act cannot be separated from it. The offences with which the petitioners have been charged are under Section 13 (2) read with 13(1) (c) & (d) of the PC Act. Those offences certainly envisage the receipt of illegal gratification for amounts wrongfully taken away from the Government. The receipt of the money in Delhi is an essential ingredient of such offence.

19. Mr. Harish Gulati, the learned Standing Counsel for the CBI has further pointed out that as far as the transactions in Delhi are concerned, the question of criminal conspiracy does arise because P.K. Thungon was at the relevant time a Union Minister of State in the Ministry of Urban Affairs and Employment. He was also a Member of Parliament. The case of the prosecution is that he abused his office for the purposes of the transactions in question. The correspondence in this regard forms part of the case record.

20. The judgment in ***Braj Bhushan Prasad*** (supra) does not assist the case of the petitioners. No comparison can be drawn with the transactions that formed the subject matter of the fodder feed scam in Bihar. Ultimately, each case will have to be examined on its own facts. As rightly pointed out by the learned trial judge, the substantive offences in the instant case include the offences under Section 120B

read with 409/419/420/467/468/471 IPC. The transaction of an opening bank account in a false name through impersonation with a view to siphoning of monies from one account to the another after encashing the drafts, are all offences which are substantive in nature and have occurred within the territorial jurisdiction of the court in Delhi. Equally, as far as P.K. Thungon is concerned, his role in the criminal conspiracy was during the period that he served as a Union Minister of State in Delhi. Mahesh Maheshwari was a part of this criminal conspiracy. According to the prosecution, the accounts in question were opened with the active help and connivance of Mahesh Maheshwari. Therefore, both these petitioners were part of the criminal conspiracy for committing the offences under the PC Act and the IPC. Unlike the facts that form the subject matter of the decision in ***Braj Bhushan Prasad*** (supra), it is not possible in the present case to hold that either sets of offences, i.e., IPC offences and PC Act offences are not the main offences. In fact each of these offences would be the “main offence”.

21. In terms of the relevant provisions of the CrPC which *pro tanto* apply to the court of the learned Special Judge, the inescapable conclusion is that the court in Delhi does have territorial jurisdiction to try the PC Act offence.

22. The decision in ***V.K. Puri*** (supra) is really of no assistance to the petitioners particularly since the offence there was under Section 13(2)

read with 13 (1) (e) PC Act. A distinction was drawn in the said

decision between the offences under Section 13(1)(e) and those under Section 13(1)(c) and 13(d). It is not possible, therefore, to agree with the contention of the petitioners in this regard.

23. For the aforementioned reasons, this Court rejects the plea of the petitioners on the question of territorial jurisdiction. Crl. M.C. No. 2563 of 2007 and 2587 of 2007 are accordingly dismissed.

24. Now turning to the criminal revision petitions this Court finds on an examination of the record, that there was sufficient material for the charges to be framed against each of the petitioners for the offences in question. An extensive discussion of the materials is not warranted at this stage particularly in view of the dictum of the Supreme Court in ***Kanti Bhadra Shah v. State of West Bengal (2001) 1 SCC 722*** in the following words:

“12. If there is no legal requirement that the trial Court should write an order showing the reasons for framing a charge, why should the already burdened trial Courts be further burdened with such an extra work. The time has reached to adopt all possible measures to chalk out measure to avert all road-blocks causing avoidable delays. If a Magistrate is to write detailed orders at different stages merely because the counsel would address arguments at all stages, the snail paced progress of proceedings in trial Courts would further be slowed down. We are coming across interlocutory orders of Magistrates and Sessions Judges running into several pages. We can appreciate if such a detailed order had been passed for culminating the proceedings before them.

But it is quite unnecessary to write detailed orders at

other stages, such as issuing process, remanding the accused to custody, framing of charges, passing over to next stages in the trial.”

26. The above principles have been reiterated in the recent judgment in ***Hem Chand v. State of Jharkhand (2008) 5 SCC 113*** in the following words (SCC @ p.115-116):

“9. It is beyond any doubt or dispute that at the stage of framing of charge, the Court will not weigh the evidence. The stage for appreciating the evidence for the purpose of arriving at a conclusion as to whether the prosecution was able to bring home the charge against the accused or not would arise only after all the evidence is brought on records at the trial. The documents whereupon the appellant intended to rely upon were: (i) an order of assessment passed by the Income Tax Authority and (ii) his declaration of assets.

13. The learned Counsel for the CBI is, thus, correct in his submission that what has been refused to be looked into by the learned Special Judge related to the documents filed by the appellant along with his application for discharge. The Court at the stage of framing charge exercises a limited jurisdiction. It would only have to see as to whether a prima facie case has been made out. Whether a case of probable conviction for commission of an offence has been made out on the basis of the materials found during investigation should be the concern of the Court. It, at that stage, would not delve deep into the matter for the purpose of appreciation of evidence. It would

ordinarily not consider as to whether the accused would be able to establish his defence, if any.”

27. Keeping the above principles in mind when one examines the material on record, it is found that there is sufficient evidence to proceed against each of these petitioners. The learned counsel for the petitioner P.K. Thungon sought to contend that there was no reference whatsoever to the exact role played by the petitioner in the transaction in question. A bare examination of the charge sheet shows the precise role played by the petitioner and the misuse of his office while being a public servant. Likewise in the case of the Mahesh Maheshwari, the contention that he is not part of the main criminal conspiracy and therefore cannot be tried for an offence under the PC Act offence is without merit in view of what has already been discussed hereinabove. In any event a detailed examination of these contentions is possible only after the trial has concluded. The petitioners can well urge these issues before the trial court at an appropriate stage.

28. For the above reasons, this Court finds no merit in the contentions of the either petitioner that no case whatsoever is made out for framing charges against them for the aforementioned offences. Accordingly, both the revision petitions are dismissed. The two Crl.M.C petitions have already been dismissed in para 23 above. The interim orders, if any, are vacated and the applications are also dismissed.

S. MURALIDHAR, J

FEBRUARY 20, 2009

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